

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

Kelvin Toyo Henry, a/k/a Kevin Toyo )  
Banks, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Warden of Greenville County Detention )  
Center; State of South Carolina; Detective )  
Shawn Cutting; Officer T. Kellett, )  
Facebook; News Broadcast Fox 21; New )  
Broadcast 7, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. 8:22-cv-4380-RMG

**ORDER**

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (Dkt. No. 14) recommending that this action be dismissed pursuant to 28 U.S.C. § 1915 and § 1915A without leave to amend and without issuance and service of process. Defendant has filed objections to the R & R. (Dkt. No. 18).

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted).

The Magistrate Judge, in a thorough examination of the facts and law in this matter, recommended that dismiss this action without issuance and service of process. By way of background, Plaintiff is a pretrial detainee awaiting trial on numerous charges, including two counts of attempted murder, criminal sexual conduct with a minor, and possession of a weapon during a violent crime. (Dkt. No. 14 at 2-3). The Magistrate Judge recommended the dismissal of this suit on numerous separate and independent grounds. First, the Magistrate Judge found that this action is subject to dismissal because it is duplicative of a prior suit, *Henry v. Warden of Greenville*, C.A. No. 6:22-3278-RMG, which this Court dismissed on January 6, 2023. (*Id.* at 5-7). Second, the Magistrate Judge found that this action is subject to dismissal under the *Younger* abstention doctrine because an action seeking release from state custody is not available under 42 U.S.C. § 1983 where there is a pending state criminal prosecution. (*Id.* at 7-10). Third, the Magistrate Judge recommended that Defendants Facebook, News Broadcast Fox 21, and News Broadcast 7 be dismissed from this action because, as private entities, they are not subject to claims arising under § 1983. Fourth, the Magistrate Judge recommended dismissal of the claims against Defendants Cutting and Kellett, law enforcement officers, because the complaint fails to allege a plausible cause of action under federal law. (*Id.* at 11-13). Fifth, the Magistrate Judge recommends the dismissal of any claims against the Warden of the Greenville County Detention Center because there is no respondeat superior liability under § 1983. (*Id.* at 13-15). Sixth, the Magistrate Judge recommended the dismissal of any claims against the State of South Carolina because the state is not a “person” under § 1983 and is entitled to Eleventh Amendment immunity. (*Id.* at 15-16). Seventh, the Magistrate Judge recommended the dismissal of all claims arising under the Fourth Amendment, false arrest, malicious prosecution, denial of due process, denial of a speedy trial,

deliberate indifference under the Eighth Amendment, and state law claims because they failed to set forth a claim for which relief could be granted. (*Id.* at 16-23).

Plaintiff additionally has filed motions for a speedy trial and to suppress evidence (Dkt. Nos. 2, 5), both which relate to pending state court criminal cases. The Magistrate Judge recommends that these pending motions should be denied as moot since the underlying claims are subject to dismissal. (*Id.* at 23).

Plaintiff filed objections to the R & R (Dkt. No. 18), essentially rearguing issues previously submitted to the Magistrate Judge and addressed in detail in the R & R. Consequently, the Court overrules all objections to the R & R.

Having thoroughly reviewed the R & R in this matter and Plaintiff's objections, the Court **ADOPTS** the R & R (Dkt. No. 14) as the order of the Court. This action is **DISMISSED WITHOUT LEAVE TO AMEND AND WITHOUT ISSUANCE AND SERVICE OF PROCESS**. The pending motions for a speedy trial and for suppression of evidence are denied as moot.

**AND IT IS SO ORDERED.**

s/ Richard Mark Gergel  
United States District Judge

March 16, 2023  
Charleston, South Carolina